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JUN 14 1965
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No. 259

In the

Supreme Court of the United States

OCTOBER TERM, 1965.

GERALD GEORGE TOMASZEK,

Petitioner,

vs.

THE STATE OF ILLINOIS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT, FIRST DISTRICT, AND TO THE SUPREME COURT OF ILLINOIS.

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Petitioner, Gerald George Tomaszek, respectfully prays that a writ of certiorari issue to review the judgment of the Illinois Appellate Court, First District, affirming his conviction for theft and revoking the probation previously granted, and the order of the Supreme Court of Illinois denying petitioner's petition for leave to appeal.

Opinions Below.

The opinion of the Illinois Appellate Court, First District, affirming petitioner's conviction is reported in full in 54 Ill. App. 2d 254 and is appended to Appendix A in this petition. A timely petition was filed with the Illinois Supreme Court requesting leave to appeal but such petition was denied without opinion, see Appendix B. The

significance of the latter denial is the same as though a writ of certiorari were denied in this court.

Jurisdiction.

The judgment of the Illinois Appellate Court, First District, was entered on December 7, 1964, and petition for rehearing was denied by the same court on December 30, 1964. A timely petition for leave to appeal was filed with the Illinois Supreme Court and was denied on March 16, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

Questions Presented.

Can a defendant on cross examination be compelled to wear certain eyeglasses found at the scene, not for identification purposes but for the purpose of allowing a jury to determine or speculate that the eyeglasses are his property, without compelling defendant to be a witness against himself and depriving him of a fair and impartial hearing in violation of the Fifth and Fourteenth Amendments?

Constitutional Provisions.

The only constitutional provisions, treaties, statutes, ordinances or regulations involved are the Fifth and Fourteenth Amendments to the Federal Constitution.

Statement of Case.

On September 12, 1962, certain articles were stolen from the trunk of an automobile. A police officer, who had known defendant for three years, testified he observed him sitting in the driver's seat of a 1955 Oldsmobile (R. 262). He pursued the Oldsmobile in a brown squad car, then lost sight of it (R. 268) and later arrested defendant in a high school for girls after being waved to the

building by an unknown witness. When he first observed defendant, defendant was wearing glasses.

An officer in another squad car following the Oldsmobile and the brown squad car came upon the Oldsmobile stopped in an alley and observed defendant in the driver's seat (R. 185-186), and saw another man in the front seat on the passenger's side. The defendant got out of the car on the driver's side and the other man, who has never been apprehended, got out on the passenger's side of the car carrying a suitcase. This man dropped the suitcase a short distance away (R. 186) that contained the eye glasses the State contended belonged to the defendant (R. 189-190).

A police officer testified that after the arrest at the police station defendant admitted the eyeglasses belonged to him. The defendant denied this conversation. The defendant further denied that he was in the 1955 Oldsmobile and stated that he ran into the high school building because while walking on the street a man shouted "Stop or I'll shoot," and he started to run to look for a place to hide.

On cross examination over the objection of the defendant the State placed the eyeglasses which had been admitted into evidence on the face of the defendant, and also cross examined him as to whether or not he could see out of these glasses (R. 412), whether it was a fact that he could see out of these glasses as well as he could see out of his own, whether the glasses were for a nearsighted or farsighted person, whether they were similar to his prescription glasses, and asked what type of person who has eye trouble would wear these glasses (R. 413), inquired as to whether or not he could see out of the glasses, and whether the glasses were for a person who suffers from an eye disorder (R. 414).